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DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

SEP 18 2009

Uniform Issue List 408.03-00

Legend:

Taxpayer A:

Decedent D:

IRA X:

Date 1:

Date 2:

Date 3:

Date 4:

Date 5:

Date 6:

Trust J:

Family Trust J:

Survivor's Trust S:

Tax Deferral Trust T:

Custodian C:

State 0=

Dear :

This is in response to letters dated September 24, 2008 and November 25, 2008, submitted on your behalf by your authorized representative, in which you request rulings on the proper treatment of the distribution from Decedent D's individual retirement account, IRA X, under Section 408(d)(3) of the Internal Revenue Code, and a ruling that IRA X will not be an inherited IRA although IRA X passes to a joint revocable trust pursuant to Decedent D's beneficiary designation.

The following facts and representations have been submitted under penalty of perjury in support of the ruling requested.

Decedent D whose date of birth was Date 1, died on Date 2 at age 69, and is survived by his wife, Taxpayer A, whose date of birth was Date 3. At the time of his death, Decedent D was the owner of IRA X, the custodian of which is Custodian C. The account balance of IRA X consisted of a rollover contribution from a distribution received by Decedent D from the retirement plan in which he participated, together with subsequent unrecognized earnings and appreciation. The custodian of the IRA X was changed at various times after Decedent D created IRA X and before his death. Decedent D received no distributions from IRA X prior to his death.

On Date 4, Decedent D and Taxpayer A, while residing in State 0, entered into a Community Property Agreement, recognized in State 0, which provided that all of their property, whether held in the name of one or both of them individually, as joint tenants, as tenants in common, or as trustees of Trust J, was their community property.

On Date 4, Decedent D and Taxpayer A also created Trust J, which was completely amended and restated on Date 5. Decedent D and Taxpayer A served as Co-Trustees of Trust J until Decedent D's death when Taxpayer A became the sole trustee of Trust J. On Date 6, Decedent D completed Custodian C's IRA account application naming Trust J as the sole beneficiary of IRA X.

Decedent D also executed a pourover Last Will and Testament designed to transfer any assets of Decedent D, which are required to be probated, into Trust J to be administered according to Trust J's terms and conditions.

Trust J provides, in relevant part, that upon the death of the first of Decedent D and Taxpayer A, Trust J is to be divided into multiple subtrusts, including Family Trust J, Survivor Trust S, and if necessary, Tax Deferral Trust T. Pursuant to Section 6.3 of Trust J, after the death of Decedent D, Taxpayer A, as the sole Trustee of Trust J, is required to apportion to Survivor's Trust S Taxpayer A's separate property, of which there is none, and Taxpayer A's one-half interest in the community property of Decedent

D and Taxpayer A.

With respect to the Decedent D's interest in the Trust J estate, which is comprised of his one-half interest in the community property as Decedent D had no separate property, pursuant to Section 6.4 of Trust J, the Trustee is required to apportion to Tax Deferral Trust T, if necessary, a pecuniary amount of the Decedent D's portion of the Trust J estate equal to the minimum dollar amount necessary as a marital tax deduction to eliminate entirely (or to reduce as much as possible) any federal tax on the estate of the Decedent.

Pursuant to Section 6.7 of Trust J, the Trustee is required to apportion to Family Trust J the Decedent's remaining interest in the trust estate. As the result of the size of Decedent D's one-half interest in the community property of the estate of Trust J, no allocation of any portion of the Trust J's assets to Tax Deferral Trust T is necessary, and the entirety of Decedent D's interest in the Trust J estate, including an equivalent value of Decedent D's community property interest in IRA X, will be allocated to Family Trust J.

Survivor's Trust S, the terms and conditions of which are contained in Section 7.1 of Survivor's Trust S, requires that its net income be distributed to Taxpayer A not less frequently than quarterly and, when the income is insufficient for the health care, education, support and maintenance of Taxpayer A, that the Trustee is authorized to distribute to Taxpayer A such amounts of the principal as the Trustee believes are necessary to fulfill any such purpose(s). Pursuant to paragraph C of Section 7.1, Taxpayer A has the absolute and unqualified right to withdraw, during her lifetime and upon written notice to the Trustee, any and all property contained in Survivor's Trust S. Further, pursuant to paragraph H of section 7.1 of Survivor's Trust S, Taxpayer A has a general power of appointment to appoint by Will any portion of the trust estate of Survivor's Trust S.

Pursuant to section 3.3 of Trust J, Taxpayer A also has the power to amend and revoke Survivor's Trust S. Upon the revocation of Survivor's Trust S, its trust estate is required to be delivered to Taxpayer A.

Under State O law and the provisions of Trust J, the Trustee has broad discretion in determining which assets comprising the trust estate of Trust J may be allocated to Family Trust J and Survivor's Trust S. Article 9 of Trust J provides that the Trustee is empowered to do all things appropriate for the orderly administration of the trust estate, including those specified under State O law. The authority of the Trustee under Article 9 of Trust J also includes a series of specific powers, including:

"9.17 Division of Estate. To make any distribution or payment in kind or in cash

or partly in kind and partly in cash and to cause any share to be composed of cash, property, or undivided interests in property different in kind from any other share, either pro rata or non pro rata, without regard to differences in the tax basis of such property and without the requirement of making any adjustment of the shares by reason of any action taken pursuant hereto. Any division, allocation, apportionment or valuation of the property to distribute the assets to or among any of the trusts or beneficiaries shall be made by the Trustee, and the good faith determination of the Trustee shall be binding and conclusive on all parties."

State 0 revised statutes similarly provides that a trustee may:

"On distribution of trust property or the division or termination of a trust, make distributions in divided or undivided interests, allocate particular assets in proportionate or disproportionate shares, value the trust property for those purposes and adjust for resulting differences in valuation."

Taxpayer A, as the Trustee of Trust J, intends to make an equal, non-pro rata, partition of the former community property of Decedent D and Taxpayer A. As part of that non-pro rata partition, Taxpayer A intends to (i) allocate the entire interest in IRA X to Survivor's Trust S, and simultaneously (ii) allocate to Family Trust J from Taxpayer A's one-half interest in Taxpayer A and Decedent D's former community property assets with a value (determined as of the date(s) of distribution) equal to the value of Decedent D's one-half community property interest in IRA X. Decedent D's partitioned share of the former community property will then be distributed to Family Trust J. After IRA X has been allocated to Survivor's Trust S, Taxpayer A will exercise her power of revocation over Survivor's Trust S and completely revoke Survivor's Trust S. Taxpayer A, as Trustee of Trust J, will then cause the IRA X proceeds to be distributed to herself as her separate property. Upon receipt of the IRA X proceeds, Taxpayer A will contribute the proceeds into an IRA established and maintained in her name. Said contribution of the IRA X proceeds to the rollover IRA will be made within 60 days of the date of their distribution from IRA X. Said distribution and rollover will occur no later than December 31, 2009.

Based on the above facts and representations, you, through your authorized representative, request rulings that

1. Taxpayer A will be treated as the payee or distributee of IRA X as those terms are used in section 408(d) of the Code.
2. With respect to Taxpayer A, IRA X does not constitute an "inherited IRA" within the meaning of Section 408(d)(3)(C) of the Code.

3. Taxpayer A will be treated, for purposes of Section 408(d)(3) of the Code, as receiving IRA X proceeds from Decedent D and not from Decedent D's estate or Trust J.

4. Taxpayer A will not be required to include in her gross income for federal income tax purposes in the tax year received (2009) the value of the proceeds of IRA X which are distributed directly to her so long as the proceeds are transferred into a rollover IRA within 60 days of the date of their distribution to Taxpayer A.

With respect to your ruling requests, Code section 408(d)(1) provides that, except as otherwise provided in this subsection, any amount paid or distributed out of an individual retirement plan shall be included in gross income by the payee or distributee, as the case may be, in the manner provided under section 72.

Code section 408(d)(3) provides that section 408(d)(1) does not apply to a rollover contribution if such contribution satisfies the requirements of sections 408(d)(3)(A) and (d)(3)(B).

Code section 408(d)(3)(A)(i) provides that section 408(d)(1) does not apply to any amount paid or distributed out of an IRA to the individual for whose benefit the account is maintained if the entire amount received (including money and any other property) is paid into an IRA (other than an endowment contract) for the benefit of such individual not later than the 60th day after the day on which he receives the payment or distribution.

Code section 408(d)(3)(C)(i) provides, in pertinent part, that, in the case of an inherited IRA, section 408(d)(3) shall not apply to any amount received by an individual from such account (and no amount transferred from such account to another IRA shall be excluded from income by reason of such transfer), and such inherited account shall not be treated as an IRA for purposes of determining whether any other amount is a rollover contribution.

Code section 408(d)(3)(C)(ii) provides that an IRA shall be treated as inherited if the individual for whose benefit the account is maintained acquired such account by reason of the death of another individual, and such individual was not the surviving spouse of such other individual. Thus, pursuant to Code section 408(d)(3)(C)(ii), a surviving spouse who acquires IRA proceeds from and by reason of the death of her husband, may elect to treat those IRA proceeds as her own and roll them over into her own IRA.

Code section 408(d)(5) provides, generally, that section 408(d) does not apply to any amount required to be distributed pursuant to Code section 408(a)(6).

Code section 408(g) provides that this section (section 408) shall be applied without regard to any community property laws.

On April 17, 2002, Final Income Tax Regulations ("regulations") were published in the Federal Register with respect to Code section 401(a)(9) and 408(a)(6). (See also 2002-19 I.R.B. 852, May 13, 2002). Section 1.408-8 of the regulations. Question and Answer 5, provides that a surviving spouse of an IRA owner may elect to treat the spouse's entire interest as a beneficiary in an individual's IRA as the spouse's own IRA. In order to make this election, the spouse must be the sole beneficiary of the IRA and have an unlimited right to withdraw amounts from the IRA. If a trust is named as beneficiary of the IRA, this requirement is not satisfied even if the spouse is the sole beneficiary of the trust.

The Preamble to the regulations provides, in relevant part, that a surviving spouse who actually receives a distribution from an IRA is permitted to roll that distribution over into his/her own IRA even if the spouse is not the sole beneficiary of the deceased's IRA as long as the rollover is accomplished within the requisite 60 day period. A rollover may be accomplished even if IRA assets pass through either a trust and/or an estate.

In this case, it is represented that Taxpayer A, as the surviving spouse of Decedent D, became the sole trustee of Trust J upon the death of Decedent D and, under the terms of Trust J, has the power and authority under Trust J and State O law to allocate the trust estate of Trust J, including IRA X, among Survivor's Trust S and Family Trust J. Said allocation need not be on a pro-rata basis. In addition, under the terms of Trust J, Taxpayer A has the absolute right to revoke Survivor's Trust S. Taxpayer A as sole Trustee of Trust J intends to allocate Decedent D's one-half community property interest in IRA X and Taxpayer A's one-half community property interest in IRA X to Survivor Trust S. Taxpayer A then intends to revoke Survivor's Trust S and cause the assets of Survivor's Trust S, including the proceeds of IRA X, to pass to Taxpayer A. Taxpayer A then intends to roll over the distribution of the proceeds of IRA X to an IRA set up and maintained in her name.

Initially, with respect to any Code section 408(g) implications, the Service notes that under the property laws of State O, IRA X constituted community property at the death of Decedent D. The Service notes that determining if IRA X was/is community property and, as such, which of the three subtrusts was/is to receive said IRA X lies outside the scope of Code section 408. Therefore, as community property, Taxpayer A's community property interest in IRA X has to be allocated to Survivor's Trust S. Additionally, under the laws of State O and the provisions of Trust J, allocations to specific sub-trusts created under a trust need not be on a pro-rata basis. Thus, Decedent D's interest in IRA X may be allocated to Survivor's Trust S in lieu of an

allocation of Taxpayer A's community property interest in other property as long as the allocation of the full amount standing in IRA X does not exceed the amount properly allocable to Survivor's Trust S.

However, once IRA X is properly allocated to Survivor's Trust S pursuant to the terms of Trust J and the property law of State O, the Service must apply the requirements of Code section 408 to determine whether IRA X may be contributed into an IRA set up and maintained in the name of Taxpayer A.

We note that under the facts stated above, Taxpayer A is the sole trustee of Trust J. Additionally, she has the right under the terms of Trust J applicable to Survivor's Trust S to receive the income of Survivor's Trust S and also to request any and all of the principal of Survivor's Trust S including IRA X. Furthermore, she has the right to terminate Survivor's Trust S and pay herself the assets of said Survivor's Trust S. Thus, in short, once IRA X is allocated to Survivor's Trust S, its payment to Taxpayer A is not subject to the discretion of any third party.

Under this set of facts, we believe it is appropriate to treat Taxpayer A as the payee and distributee of IRA X for purposes of Code sections 408(d)(1) and 408(d)(3). Thus, with respect to your ruling requests, we conclude as follows:

1. Taxpayer A will be treated as the payee or distributee of IRA X entitled to receive distributions therefrom.
2. With respect to Taxpayer A, IRA X does not constitute an "inherited IRA" within the meaning of Section 408(d)(3)(C) of the Code.
3. Taxpayer A will be treated, for purposes of Section 408(d)(3) of the Code, as receiving IRA X proceeds directly from Decedent D and not from Decedent D's estate or Trust J.
4. Taxpayer A will not be required to include in her gross income for federal income tax purposes in the tax year received (2009) the value of the proceeds of IRA X which are distributed directly to her so long as the proceeds are transferred into a rollover IRA within 60 days of the date of their distribution to Taxpayer A.

This ruling letter assumes that IRA X either is or was qualified under Code section 408(a) at all times relevant thereto. It also assumes that the rollover IRA to be set up by you will also meet the requirements of Code section 408(a) at all times relevant thereto. Finally, it assumes that your rollover of the IRA X distribution will be made within the time frame referenced in Code section 408(d)(3)(A)(i).

This letter ruling does not authorize Taxpayer A's contribution of amounts required to be distributed under Code section 401(a)(9), applicable to IRAs pursuant to Code section 408(a)(6) (if any), into her rollover IRA.

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited by others as precedent.

A copy of this letter is being sent to your authorized representative in accordance with a power of attorney on file in this office.

No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations, which may be applicable thereto.

If you wish to inquire about this ruling, please contact

Sincerely yours,



Frances V. Sloan, Manager
Employee Plans Technical Group 3

Enclosures:
Deleted copy of letter ruling
Notice of Intention to Disclose